

### **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the Office Action mailed October 14, 2009. As will be explained in further detail below, Applicants submit that independent Claims 33, 57, 94, and 95 are distinguishable from the cited references. Claims 94 and 95 have been amended for clarification, and Claims 97-106 have been added. In light of the amendments and subsequent remarks, Applicants respectfully request reconsideration and allowance of the claims.

In the Office Action, the Examiner rejects Claims 33, 34, 43, 46, 48-50, 54-57, and 88-96 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,137,993 to Acosta et al. in view of U.S. Patent No. 4,795,434 to Kujawski. The Examiner rejects the remaining dependent claims over Acosta and Kujawski in view of various secondary references.

In Applicants' previous response, independent Claims 33 and 57 were amended to recite that each of the tracks includes a plurality of tabs spaced axially from one another along a longitudinal axis between the proximal and distal ends thereof and that each tab is configured to engage at least one therapeutic medical appliance. Independent Claim 94 was added and recites that the tracks are independent of one another and the outer tubular member and that the tracks are slidably coupled with the grooves such that each of the tracks is independently and axially displaceable within a respective groove. Moreover, independent Claim 95 was added and recites that each therapeutic medical appliance is configured to be engaged by at least one tab at both a proximal end and a distal end thereof.

The Examiner continues to believe that the combination of Acosta and Kujawski discloses the claimed invention. In this regard, the Examiner acknowledges that Acosta does not "disclose a plurality of tracks complementary and slidably coupled with the grooves of an outer tubular member such that the tracks and grooves are linearly displaceable with respect to the other and each track including a plurality of spaced tabs." However, the Examiner contends that it would have been obvious to one of ordinary skill to modify the sheath shown in FIG. 43A in view of the embodiment disclosed in FIGS. 45A-E "to include two independently sliding tracks (such as semi-tubes) such that one track can be held stationary while the other is moved, and

each of the tracks having [a] plurality of tabs.” In reaching this conclusion, the Examiner believes that such a modification would yield predictable results.

Applicants respectfully disagree with the rejection of independent Claims 33, 57, 94, and 95. In particular, Applicants submit that neither Acosta nor Kujawski teaches or suggests a plurality of tracks slidably coupled with the grooves of an outer tubular member such that tracks and grooves are linearly or axially displaceable with respect to one another, as recited by Claims 33, 57, 94, and 95. The Examiner acknowledges that the embodiments of Acosta fail to disclose this aspect of Claims 33, 57, 94, and 95. The Examiner goes on to find that it would have been obvious to one of ordinary skill in the art to modify Acosta in view of the embodiments shown in FIGS. 43A-B and 45A-E. However, Acosta does not teach or suggest that such a modification is desirable. In this regard, FIGS. 43A-B of Acosta disclose that a pair of tabs (376, 378) are diametrically opposed from one another at a distal end of a single sheath (184), while FIGS. 45A-E of Acosta disclose that only the semi-tube (406) is axially displaceable with respect to the sheath (184), while the engagement elements (402) are fixed on the sheath. Thus, any modification to the embodiment of FIGS. 43A-B of Acosta in view of the teachings of FIGS. 45A-E would provide a single semi-tube or alleged “track” that is axially displaceable with respect to the outer sheath rather than a plurality of displaceable tracks as recited by the claimed invention. As such, unlike the claimed invention, Acosta discloses that tabs are formed from the same sheath (184) or that only one of the semi-tubes is axially displaceable with respect to the sheath.

Moreover, Acosta teaches away from modifying the embodiment of FIG. 43A-B to include one track that is held stationary while another track is moved as proffered by the Examiner. In this regard, the embodiment shown in FIGS. 43A-B functions in an entirely different manner of that of FIGS. 45A-E in order to deploy a prosthesis, wherein the outer sheath (380) is pushed distally relative to the sheath (184) in order to advance the prosthesis onto a balloon catheter and then the outer sheath is retracted over the prosthesis. Conversely, the embodiment of FIGS. 45A-E of Acosta discloses that a semi-tube (406) is advanced to advance the prosthesis distally out of the sheath (184) while the sheath is held stationary. Thus, Acosta

teaches away from modifying the embodiment of FIGS. 43A-B to include a semi-tube to advance the prosthesis since it is the engagement of the lobes (378) and advancement of the outer sheath (380) that deploys the prosthesis. As such, Applicants fail to appreciate the teaching or suggestion to modify any of the embodiments of Acosta in view of one another to arrive at independent Claims 33, 57, 94, and 95.

The Examiner argues that modifying Acosta to include a plurality of axially displaceable tracks would yield the predictable result of advancing the prosthesis into the outer tubular member. Given that none of the embodiments of Acosta teaches or suggests the claimed invention, Applicants respectfully disagree that such a modification is predictable. In addition, Applicants respectfully submit that such a rejection amounts merely to a general conclusory statement without a clear articulation of the reasons why the claimed invention would have been predictable. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007), *quoting In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be *some articulate reasoning* with some rational underpinning to support the legal conclusion of obviousness” (emphasis added)). The Examiner simply concludes that modifying Acosta to advance the prosthesis into the outer tubular member would be predictable, but the prosthesis is deployed in different manners according to the embodiments shown in FIGS. 43A-B and 45A-E of Acosta. Because the Examiner has not clearly articulated why such a modification of Acosta would have been obvious, Applicants submit that neither Acosta nor any of the remaining cited references taken alone or in combination teaches or suggests independent Claims 33, 57, 94, and 95.

Despite at least the aforementioned distinctions, Applicants have amended independent Claim 94 to recite that each of the tracks extends longitudinally within a respective groove. For example, FIG. 3 illustrates this aspect. In the Office Action, the Examiner contends that Kujawski discloses longitudinal grooves (37) through which ears (36) slide and that it would have been obvious to have modified Acosta to include such grooves and ears or projections. Applicants respectfully submit that neither Acosta nor Kujawski teaches or suggests tracks

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extending longitudinally within a respective groove, as now recited by independent Claim 94. As acknowledged by the Examiner, Acosta does not disclose grooves at all. Moreover, Kujawski discloses that discrete ears slide within channels, but the ears do not extend longitudinally within the channels. Rather, Kujawski discloses that the ears are employed to engage a reduced-diameter ledge (38) at the proximal end of the bore (35) to retain the distal end of the middle tube within the outer tube when the middle tube is fully retracted (see col. 4, line 64 – col. 5, line 3). Thus, the ears of Kujawski are employed to retain the middle tube and outer tube in engagement, but Kujawski nowhere teaches or suggests that the ears extend longitudinally within the channels. Thus, any modification of Acosta in view of Kujawski would result in providing ears that do not extend longitudinally within respective channels. Alternatively, modifying Kujawski to include longitudinally extending ears would inhibit the ability of the middle tube and outer tube to be displaced with respect to one another such that there is no teaching or suggestion to provide ears that extend longitudinally within the channel.

Furthermore, independent Claim 95 has been amended to recite that each track is positioned within a respective groove such that the tabs extend outwardly from within the groove and into the lumen of the outer tubular member. For instance, FIG. 3 depicts such a configuration. In contrast, Acosta does not teach or suggest grooves at all as conceded by the Examiner. Moreover, other than disclosing ears that engage reduced-diameter ledges, Kujawski provides no teaching or suggestion regarding tracks positioned within grooves such that the tabs associated with the tracks project outwardly of the grooves and into the lumen of the outer tubular member. Therefore, none of the cited references teaches or suggests Claim 95.

In view of the remarks and amendments presented above, it is respectfully submitted that all of the pending claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the independent claims has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the

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dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary. For example, none of the cited references teaches or suggests new Claims 97-106.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 50-2764.

Respectfully submitted,



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**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON November 12, 2009.**